

## REMARKS

Applicant has studied the Non-Final Office Action dated December 16, 2009 and have amended claim 1. Claims 10-11 have been cancelled. New claims 22 and 23 have been added. No new matter has been added. Claims 1-6, 14-16, and 22-23 are pending in the application. Reconsideration and allowance of the pending claims in view of the following remarks are respectfully requested. Applicant submits that the application is in condition for allowance. In the Office Action, the Examiner:

- rejected claims 1-6, 14, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Brown (U.S. Patent No. 6,151,586) in view of Bro (U.S. Patent No. 5,722,418); and
- rejected claim 16 under 35 U.S.C. § 103(a) as being unpatentable over Brown (U.S. Patent No. 6,151,586) in view of Sehr (U.S. Patent No. 6,085,976).

### Rejection Under 35 U.S.C. § 103

As noted above, the Examiner rejected claims 1-6, 14, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Brown (U.S. Patent No. 6,151,586) in view of Bro (U.S. Patent No. 5,722,418).

**(A)** With respect to claims 1, the Examiner states that Brown teaches:

- (a) defining a plurality of general programme (Brown: col 12, Ins 18-23) areas and a plurality of specific programme areas (Brown: col 12, Ins 23-25. See also the Bro reference below which teaches other aspects of this step);
- (c) awarding points to a member of each of the specific programme areas in which the member participates, only if the member is afflicted with a disease, to which the specific programme area in which the member participates has been determined to be of particular benefit (Brown: col 8, Ins 37-53; col 23, Ins 45-57);
- (d) calculating the total number of points awarded to the member (Brown: col 11, Ins 33-36, reads on "fulfilled the evaluation criteria"; col 23, Ins 45-57); and
- (e) allocating a reward to the member if the total number of points awarded to the member accumulate to a predetermined amount (Brown: col 23, Ins 45-57).

Applicants respectfully disagree with the Examiner. Brown at col. 12, lines 18-23 merely discloses:

In step 304, script generator 70 generates customized health management script program 60 from the information entered in screen 76. Customized health management script program 60 is stored in database 58. Steps 302 and 304 are preferably repeated to generate multiple customized health management script programs 60, e.g. a customized health management script program 60 for diabetic individuals, a customized health management script program 60 for asthmatic individuals, etc. Each customized health management script program 60 corresponds to a respective one of the sets of compliance questions entered through script entry screen 76. Following step 304, server 42 proceeds to step 306.

As can be seen, Brown only teaches custom programs that are based off of script information. Brown teaches that script information "includes compliance questions, and for each of the compliance questions, corresponding responses choices'...". Therefore, because Brown explicitly teaches customized programs Brown cannot teach or suggest defining general program areas and specific program areas as asserted by the Examiner.

Furthermore, nowhere does Brown teach or suggest "awarding points to a member of each of the specific programme areas in which the member participates, only if the member is afflicted with a disease, to which the specific programme area in which the member participates has been determined to be of particular benefit" as asserted by the Examiner. Brown never determines if a member is afflicted with a disease that is associated with the specific program area that the member has participated in. In Brown a member has a specific script that the member follows. Col. 8, lines 37-53 of Brown cited by the Examiner only shows how an administrator can create a script/program for a member. This section is completely irrelevant to "awarding points to a member of each of the specific programme areas in which the member participates, only if the member is afflicted with a disease, to which the specific programme area in which the member participates has been determined to be of particular benefit".

Col. 23, lines 45-57 of Brown cited by the Examiner only shows how Brown determines if the member has satisfied various criteria of the member's customized script/program in order to receive credits. Because Brown customizes a script/program for a member Brown already knows what disease the member has and every item in the member's customized script/program would therefore be associated with the disease. Therefore, Brown clearly does not teach or suggest (and actually teaches away from) "awarding points to a member of each of the specific programme areas in which the member participates, only if the member is afflicted with a disease, to which the specific programme area in which the member participates has been determined to be of particular benefit". In fact, Brown allows a user to call in or enter compliance information. Nowhere does Brown teach or suggest that a check is performed so that points are only allocated to the member when a member is afflicted with a disease to which the specific program area in which the member participated in has been determined to be of particular benefit to that disease.

Even further, nowhere does Brown teach or suggest "allocating a reward to the member if the total number of points awarded to the member accumulate to a predetermined amount" as asserted by the Examiner. For example, Brown explicitly teaches that credit is given to a member when the member is deemed compliant. See Brown at col. 23, lines 44-57. Compliance, in Brown, is meeting the criteria of the script/program. Nowhere does Brown teach or suggest that points are allocated to the member and then after the member has accumulated points over a predetermined amount the member is allocated a reward. Brown merely determines if the user has satisfied the criteria of the script/program and then credits the user in response thereto.

Accordingly, the presently claimed invention distinguishes over Brown for at least these reasons.

**(B)** The Examiner correctly states "Brown fails to explicitly teach awarding points separately to general and specific program areas, and associated levels of performance as recited in amendments to claim 1". The Examiner goes on to combine Brown with Bro stating that Bro

discloses:

(a) wherein the plurality of general programme areas are programme areas that if complied with will be of benefit to a member stricken with any disease managed by the disease management programme (e.g. Bro: col 11. In 20, "exercise)

and

wherein the plurality of specific programme areas are programme areas that are determined to be of particular benefit to a member afflicted with some but not all of the diseases managed by the disease management programme (e.g. Bro: col 12, Ins 47-53, Le, "chronic diseases");

and

(b) awarding points (e.g. Bro: col 40, Ins 31-33, reads on "credits"; col 41, Ins 34-38. Le. "reinforcer"; col 38, his 50-64) to a member for each of the general programme areas in which the member participates, the points being allocated to members based on a multi-level system (Bro: col 60, Ins 52-62, multi-level reads on "graded"), including:

a first level, wherein the member is awarded points for merely taking part in a programme area (Bro: col 40, Ins 34-49),

a second level, wherein the member is awarded a greater number of points for taking part in all programme areas associated with a disease with which the member is afflicted (Bro: col 40, Ins 51-56),

and

a third level wherein the member is awarded o n s for attainin# a minimum level for a measurable of a programme area associated with a disease with which the member is afflicted (Bro: col 40, Ins 34-49),

However, Bro teaches a method and system of behavioral modification which uses rewards to reinforce desired behavior (e.g. Bro: col 41, Ins 34-38). The teachings include applying the method to both 1) general (e.g. Bro: col 11, In 20, "exercise) program areas, where participation would be valuable to a patient regardless of the patient's disease state, and 2) specific areas, such as programs relating to specific chronic diseases (e.g. Bro: col 12, Ins 47-53).

Applicants respectfully disagree with the Examiner. Nowhere does Bro teach or suggest both "wherein the plurality of general programme areas are programme areas that if complied with will be of benefit to a member stricken with any disease managed by the disease management programme (e.g. Bro: col 11. In 20, "exercise") and wherein the plurality of specific programme

areas are programme areas that are determined to be of particular benefit to a member afflicted with some but not all of the diseases managed by the disease management programme (e.g. Bro: col 12, Ins 47-53, Le, "chronic diseases")" as asserted by the Examiner.

Bro merely shows at col. 11, line 20 that "exercise" is one component area that a program may be directed to. Bro at col. 12, lines 47-53 merely teaches "Another object of the invention is that the use of an expert and the patient program may be directed to the field of chronic disease detection. More particularly, the patient program will provide periodic behavioral cues to aid the expert in the early diagnosis and cure of such chronic diseases as glaucoma, dental and periodontal disease, cancer, heart disease, and diabetes". As can be seen, Bro merely states that the expert/patient program can be used to detect diseases. Bro fails to teach or suggest the nexus between general program areas and specific program areas as recited by the presently claimed invention. Stated differently Bro fails to teach or suggest that a disease management program has both general and specific program areas where general program areas are of benefit to all diseases and specific program areas are of benefit to specific diseases only. Bro seems to only teach offering a program directed towards changing a specific behavior problem. Therefore, Bro does not teach a disease management program that has both general and specific program areas where general program areas are of benefit to all diseases and specific program areas are of benefits to specific diseases only.

Furthermore, nowhere does Bro teach the multi-level system of the presently claimed invention. For example, nowhere does Bro teach or suggest the second level where the member is awarded a greater number of points for taking part in all program areas associated with a disease with which the member is afflicted. In fact, Bro at col. 40, lines 51-56 only discloses cumulative credits. This is irrelevant to a member being awarded more points in response to participating in all program areas associated with a disease that the member is afflicted with. In other words, the condition to be satisfied for the second level points is satisfying all program areas associated with a disease that the member is afflicted with. Once this condition is satisfied the member gets a bonus set of points that are in addition to any other points previously awarded. To further

clarify this point, Applicants have amended claim 1 to more clearly recite "a second level, wherein the member is awarded a bonus set of points in addition to the points awarded in the first level in response to participating in all programme areas associated with a disease with which the member is afflicted". Nowhere does Bro teach or suggest this for the reasons stated above.

Accordingly, the presently claimed invention distinguishes over Brown and Bro individually and/or in combination with each other for at least these reasons.

**(C)** As noted above, the Applicants have added new claims 22 and 23. New claim 22 recites:

defining a plurality of general programme areas and a plurality of specific programme areas, wherein the plurality of general programme areas are programme areas that if complied with are of benefit to a member stricken with any disease managed by the disease management programme and wherein the plurality of specific programme areas are programme areas that are determined to be of particular benefit to a member afflicted with some but not all of the diseases managed by the disease management programme;

combining the plurality of general programme areas and the plurality of specific programme areas into a programme of the disease management programme;

offering the programme comprising the plurality of general programme areas and the plurality of specific programme areas that have been combined to a plurality of members of the disease management programme, wherein at least two members in the plurality of members each comprise a different disease;

determining that at least one member in the plurality of members has participated in at least one of the plurality of specific programme areas;

identifying a disease associated with the at least one of the plurality of specific programme areas participated in by the member;

determining if the member is afflicted with the disease that has been identified; and

awarding points to the member for the at least one of the plurality of specific programme areas participated in by the member in response to determining that the member is afflicted with the disease that has been identified.

In addition to the remarks and arguments made above, nowhere does Brown and Bro teach or suggest "...combining the plurality of general programme areas and the plurality of specific programme areas into a programme of the disease management programme; offering the

programme comprising the plurality of general programme areas and the plurality of specific programme areas that have been combined to a plurality of members of the disease management programme, wherein at least two members in the plurality of members each comprise a different disease; determining that at least one member in the plurality of members has participated in at least one of the plurality of specific programme areas; identifying a disease associated with the at least one of the plurality of specific programme areas participated in by the member; determining if the member is afflicted with the disease that has been identified; and awarding points to the member for the at least one of the plurality of specific programme areas participated in by the member in response to determining that the member is afflicted with the disease that has been identified".

For example, Brown only teaches custom programs that are based off of script information associated with a given user. Therefore, Brown cannot teach or suggest that general program areas, which are of benefit for all diseases managed by the disease management system, are combined with specific program areas, which are of benefit to only specific diseases, to create a program that is offered to multiple members that have different diseases. Brown specifically tailors the scripts/programs to the given user. Therefore, each program area of a script/program in Brown is of benefit to the user and is particular to that user's disease.

Bro is completely silent on combining general program areas, which are of benefit for all diseases managed by the disease management system, with specific program areas, which are of benefit to only specific diseases, to create a program that is offered to multiple members that have different diseases. Brown tailors its program to a specific behavior that is to be modified or reinforced.

Therefore, Brown and Bro fail to teach or suggest "...combining the plurality of general programme areas and the plurality of specific programme areas into a programme of the disease management programme; offering the programme comprising the plurality of general programme areas and the plurality of specific programme areas that have been combined to a

plurality of members of the disease management programme, wherein at least two members in the plurality of members each comprise a different disease...".

Brown and Bro also fail to teach or suggest "... determining that at least one member in the plurality of members has participated in at least one of the plurality of specific programme areas; identifying a disease associated with the at least one of the plurality of specific programme areas participated in by the member; determining if the member is afflicted with the disease that has been identified; and awarding points to the member for the at least one of the plurality of specific programme areas participated in by the member in response to determining that the member is afflicted with the disease that has been identified".

Nowhere does Brown or Bro identify a disease associated with a user after a user participates in a program area. In Brown, the program is specific to a user's health problem so this determination is not necessary. Once the user enters his/her information Brown determines if the user has done what the program has asked and awards a credit. Bro tailors the program to a specific behavior to be addressed and awards the user based on performance. Because the program is Bro is directed toward a specific behavior Bro also does not identify a disease associated with a user after a user participates in a program area. For the same reasons Bro and Brown also fail to teach or suggest "awarding points to the member for the at least one of the plurality of specific programme areas participated in by the member in response to determining that the member is afflicted with the disease that has been identified".

Accordingly, the presently claimed invention distinguishes over Brown and Bro individually and/or in combination with each other for at least these reasons as well.

With respect to new claim 23, new claim 23 recites:

defining a plurality of general programme areas and a plurality of specific programme areas, wherein the plurality of general programme areas are programme areas that if complied with are of benefit to a member stricken with any disease managed by the disease management programme and wherein the



plurality of specific programme areas are programme areas that are determined to be of particular benefit to a member afflicted with some but not all of the diseases managed by the disease management programme;

combining the plurality of general programme areas and the plurality of specific programme areas into a programme of the disease management programme;

offering the programme comprising the plurality of general programme areas and the plurality of specific programme areas that have been combined to a plurality of members of the disease management programme, wherein at least two members in the plurality of members each comprise a different disease;

determining that at least one member in the plurality of members has participated in at least one programme area in at least one of the plurality of general programme areas and the plurality of specific programme areas;

awarding a first set of points to the member in response to the member participating in the at least one programme area, wherein the first set of points are awarded based on a multi-level system comprising:

a first level where the first set of points are allocated to the member after participating in a first programme area;

determining that the member has participated in all of the plurality general programme areas and a set of specific programme areas in the plurality of specific programme areas;

identifying a disease associated with the set of specific programme areas participated in by the member;

determining that the set of specific programme areas comprises all of the specific programme areas associated with the disease that has been identified;

determining if the member is afflicted with the disease that has been identified; and

awarding a second set of points to the member for the at least one of the plurality of specific programme areas participated in by the member in response to determining that the member is afflicted with the disease that has been identified, wherein the second set of points are awarded based on the multi-level system comprising:

a second level where the second set of points are allocated to the member in addition to the first set of points in response to participating in all programme areas associated with the disease that the member is afflicted with;

determining that member has attained a minimum level for a measurable of at least one programme area associated with the disease that the member is afflicted with;

awarding a third set of points to the member in response to the member having attained the minimum level, wherein the second set of points are awarded based on the multi-level system comprising:

a third level where the third set of points are allocated based on the member having satisfied the first level and the second level, where the third set of points being allocated in addition to the first set of points and the second set of point;

calculating, based at least on the first set of points, the second set of points, and the third set of point, a total number of points awarded to the member, and

allocating a reward to the member if the total number of points awarded to the member accumulates to a predetermined amount of points.

In addition to the remarks and arguments made above with respect to claim 1 and 22, Brown and Bro fail to teach or suggest awarding points on a first, second, and third level where the second level is awarded after the first level is satisfied and the third level is awarded after the second level is satisfied. Brown and Bro are completely silent on these claim elements.

Accordingly, the presently claimed invention distinguishes over Brown and Bro individually and/or in combination with each other for at least these reasons as well.

Claims 2-6, 14, and 15 depend from claim 1. Since dependent claims recite all of the limitations of their independent claim, claims 2-6, 14, and 15 also recite in allowable form as well.

**(C)** As noted above, the Examiner rejected claim 16 under 35 U.S.C. § 103(a) as being unpatentable over Brown (U.S. Patent No. 6,151,586) in view of Sehr (U.S. Patent No. 6,085,976).

Claim 16 depends from claim 1, since dependent claims recite all of the limitations of their independent claim and Brown and Sehr fail to teach or suggest the subject matter of claim 1, claim 1 also recites in allowable form as well.

**(D)** For the foregoing reasons Applicant submits that 1-6, 14-16, and 22-23 distinguish over the cited references alone and/or in combination with each other. Therefore, Applicant respectfully

submits that the rejection of claims 1-6, 14-16 has been overcome and should be withdrawn.

### CONCLUSION

Applicants acknowledge the continuing duty of candor and good faith to disclosure of information known to be material to the examination of this application. In accordance with 37 CFR § 1.56, all such information is dutifully made of record. The foreseeable equivalents of any territory surrendered by amendment is limited to the territory taught by the information of record. No other territory afforded by the doctrine of equivalents is knowingly surrendered and everything else is unforeseeable at the time of this amendment by Applicants and their attorneys.

**If the Examiner believes that there are any informalities that can be corrected by Examiner's amendment, or that in any way it would help expedite the prosecution of the patent application, a telephone call to the undersigned at (305) 305-830-2600 is respectfully solicited.**

The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account 503410 (Docket No.: 7802-A08-002).

Applicants respectfully submit that all of the grounds for rejection stated in the Examiner's Office Action have been overcome, and that all claims in the application are allowable. No Previously Presented matter has been added. It is believed that the application is now in condition for allowance, which allowance is respectfully requested.

**PLEASE CALL** the undersigned if that would expedite the prosecution of this application.

Respectfully Submitted,

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